any grounds. U. S. REV. STAT., 1878, § 3224. Nor will unconstitutional state taxation be enjoined, unless special facts show the insufficiency of the relief at law. *Shelton* v. *Platt*, 139 U. S. 591. Municipal corporations are not sovereign, and many courts have granted injunctive relief against unconstitutional taxation by them, despite the apparent adequacy of the remedies at law. *Lee* v. *Mellette*, 15 S. D. 586. In declining to distinguish municipal from state taxation under the federal procedure, the court in the principal case is supported by authority. *Dows* v. *Chicago*, 11 Wall. (U. S.) 108. Indeed, as the Judiciary Act in general terms denies equitable jurisdiction to the federal courts "where a plain, adequate, and complete remedy may be had at law," the result seems inevitable. U. S. REV. STAT., 1878, § 723.

INJUNCTIONS — ACTS RESTRAINED — RIGHT OF COURT TO REFUSE INJUNCTION AGAINST PRIVATE NUISANCE. — The plaintiff, a farmer, because of injury to his crops from the fumes of the defendant's smelter, brought a bill for a permanent injunction against the nuisance. The plaintiff's farm had not been rendered unprofitable; while the defendant's smelter had been built at a cost of $10,000,000, and was one of the chief industries of the state. *Held*, that an injunction will not be granted. *Bliss* v. *Anaconda Copper Mining Co.*, 167 Fed. 342 (Circ. Ct., D. Mont.). See NOTES, p. 596.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — CONDITION AGAINST SALE. — A mortgagor insured his interest for the benefit of the mortgagee. The policy contained a condition against sale. On default by the mortgagor, the mortgagee under a power of sale transferred to himself the absolute title. *Held*, that this transfer avoids the policy. *Boston Coöperative Bank* v. *American Cent. Ins. Co.*, 87 N. E. 594 (Mass.). See NOTES, p. 602.

INSURANCE — RESCISSION OF CONTRACT FOR FRAUD. — The plaintiff was induced to continue a policy of life insurance by the fraudulent representations of the insurer's agent. *Held*, that on discovering the fraud the plaintiff can rescind, and recover the full amount of the premiums paid. *Refuge Assurance Co.* v. *Kettlewell*, 126 L. T. 427 (Eng., H. L., March 5, 1909).

This decision affirms that of the Court of Appeal commented on in 22 HARV. L. REV. 134.

JUDGMENTS — EQUITABLE RELIEF — PERJURY A GROUND FOR INJUNCTION. — The plaintiff's testator had made a contract with the defendant, which later was cancelled. Concealing the cancellation, the defendant had secured a judgment against the plaintiff by means of false testimony. The plaintiff who was free from negligence in the court of law prayed for an injunction against the enforcement of the judgment. *Held*, that the plaintiff is entitled to an injunction on establishing the perjury. *Boring* v. *Ott*, 119 N. W. 865 (Wis.). See NOTES, p. 600.

MUNICIPAL CORPORATIONS — MUNICIPAL PROPERTY — DELEGATION OF POWER TO LEASE PROPERTY. — The charter of the plaintiff city gave the city council power to let or sell city property. An ordinance was passed authorizing a committee to lease certain property upon such terms and conditions as the committee deemed expedient. On February 20 the committee executed a lease to the defendant to take effect June 1. Between these dates a new city government came into office. Suit was brought to test the validity of the lease. *Held*, that the lease is valid. *City of Biddeford* v. *Yates*, 72 Atl. 335 (Me.).

Powers granted to a city council by statute or charter cannot be delegated to any of its officers or committees without express legislative authority, unless the duty involved is purely ministerial. *Lyon* v. *Jerome*, 26 Wend. (N. Y.) 485; *People* v. *Clean Street Co.*, 225 Ill. 470. A duty is ministerial when the mode of its performance is defined with such certainty that nothing remains for judgment or discretion. *Grider* v. *Tally*, 77 Ala. 422; *State of Mississippi* v. *Johnson*, 4 Wall. (U. S.) 475. Some courts have not adhered strictly to this definition in deciding a question of delegation of duties. *Hitchcock* v. *Galveston*, 96 U. S.

341; *Gillett* v. *Logan County*, 67 Ill. 256. Nevertheless the principal case goes far in holding the duties of the committee to be ministerial when the ordinance giving it the power to lease expressly directed an exercise of discretion. The right to sell land may not be delegated by a city; yet, so far as the question of delegation is concerned, this would seem to be little different from the right to lease. *Beal* v. *City of Roanoke*, 90 Va. 77. Granting that the delegation was justifiable, the making of a lease by one body to take effect *in futuro* under another body of municipal officers may be valid as a reasonable exercise of the business power of the city. See *Omaha Water Co.* v. *City of Omaha*, 147 Fed. 1.

PATENTS — INFRINGEMENT — CONTRIBUTORY INFRINGEMENT. — The patentee of a talking-machine had no patent on the sound-producing records used with the machine. The defendant manufactured and sold records solely for the use of purchasers of the talking-machines. *Held*, that the sale of the records may be enjoined, on the ground that the records are non-perishable necessary adjuncts of the main patent. *Leeds & Catlin Co.* v. *Victor Talking Machine Co.*, U. S. Sup. Ct., April 19, 1909.

This decision affirms that of the Circuit Court of Appeals discussed in 21 HARV. L. REV. 150.

PAYMENT — APPLICATION — INTEREST APPLIED BY LAW TO THE OLDER DEBT. — The obligor on two bonds, given at different dates to the same obligee, who pledged the older without the knowledge of the obligor, paid the obligee interest, without express appropriation by either party. *Held*, that the interest is by law applied on the older debt. *African Banking Corporation* v. *Blauwkop Garden Co.*, 26 S. Afr. L. J. 135 (Cape Colony, Sup. Ct., Dec. 8, 1908).

For a discussion of the principles involved, see 21 HARV. L. REV. 623.

SALES — RIGHTS AND REMEDIES OF SELLER — MEASURE OF DAMAGES UNDER EXECUTORY CONTRACT OF SALE. — The defendant contracted to purchase a stipulated amount of bar iron, assorted hardware specifications, specifications to be furnished by the defendant. The contract did not require that the plaintiff manufacture the goods, but the defendant knew that it was its intention to do so. Before any of the iron was manufactured the defendant repudiated the agreement and refused to furnish specifications. Bar iron had a well-known market value. *Held*, that the measure of damages is the difference between the contract price and what it would have cost the plaintiff to manufacture and deliver that grade of iron upon which it would have made the least profit under the defendant's option. *W. J. Holliday & Co.* v. *Highland Iron and Steel Co*, 87 N. E. 249 (App. Ct. of Ind.).

On non-delivery by a vendor under an executory contract of sale the vendee's damages are usually the difference between the contract price and the market price of the goods at the time and place of performance. *Capen* v. *The De Striger Glass Co.*, 105 Ill. 185. When the vendor has acquired the goods by purchase or manufacture, many jurisdictions apply the same rule to a breach by the vendee. *Tufts* v. *Bennett*, 163 Mass. 398. Other jurisdictions allow the vendor to appropriate the goods to the buyer and recover the price. *Bement* v. *Smith*, 15 Wend. (N. Y.) 493. By some states this latter rule is limited to goods not readily marketable. *Kinkead* v. *Lynch*, 132 Fed. 692. See Uniform Sales Act, § 63, Williston, Sales, § 560. But when, as in the principal case, the goods have not yet been acquired by the vendor, he is not bound to obtain and tender them. Indeed it would seem that he cannot continue performance. *Cf. Clark* v. *Marsiglia*, 1 Den. (N. Y.) 317. In such a case the damages are the difference between the contract price and the cost of manufacture or purchase. *Hinckley* v. *Pittsburg Steel Co.*, 121 U. S. 264; *H. D. Taylor Mfg. Co.* v. *Niagara Co.*, 52 N. Y. Misc. 356. See Uniform Sales Act, § 64, Williston, Sales, § 580. And when the vendee has an option to choose among different grades of goods it is to be assumed that he would choose those upon which the vendor would realize the least profit. *Kimball Bros.* v. *Deere, Wells & Co.*, 108 Ia. 676.